

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BETTY MAE HANZEL,

Plaintiff,

V.

LIFE CARE CENTERS OF AMERICA, INC., a Tennessee Corporation, and CONSOLIDATED RESOURCES HEALTH CARE FUND I, a Georgia Limited Partnership,

Defendants.

CASE NO. 8:05CV435

ORDER

This matter comes before the Court on the Plaintiff's Appeal (Filing No. 76) from the Magistrate Judge's Order (Filing No. 73). The Magistrate Judge's Order denied the Plaintiff's Motion to Compel Discovery and for Award of Reasonable Attorney's Fees (Filing No. 63), on the basis that the Plaintiff had not made a showing of a sincere attempt to resolve the discovery differences that had arisen. (Filing No. 73, 2). The Magistrate Judge's order further instructed the Plaintiff to file a response to that order, showing cause why the Defendants should not be awarded the attorney's fees incurred in defending the motion to compel.

I have reviewed the materials filed in conjunction with the motion to compel, the materials filed in conjunction with the Magistrate Judge's ordered response, and the materials filed in conjunction with the appeal from the Magistrate Judge's order. I agree with the Magistrate Judge that the Plaintiff has not demonstrated a sincere attempt to remedy the discovery disputes. Accordingly, I will, at this time, affirm the denial of the Plaintiff's motion to compel.

However, the discovery issues that have impeded the progress of this case do not appear to stem wholly from the Plaintiff. Consequently, I accept as sufficient the Plaintiff's response that was ordered by the Magistrate Judge, and will award neither side attorney's fees at this time.

Counsel are instructed to meet and confer, on or before February 14, 2007, to try to resolve pending discovery issues. Counsel are further instructed to review the Court's Policy on Uncivil and Unprofessional Conduct (NEGenR 1.8(e)) to ensure an understanding of their responsibilities and their rights. Insulting remarks directed to opposing counsel will not be tolerated by the Court.

IT IS ORDERED:

1. The Plaintiff's Appeal from the Magistrate Judge's Order (Filing No. 76) is denied;
2. Each party shall pay its own costs and attorney's fees associated with the Plaintiff's motion to compel, the Magistrate Judge's ordered response, and the Plaintiff's appeal from the Magistrate Judge's order; and
3. The parties are instructed to hold a meet-and-confer conference on or before February 14, 2007, to attempt to remedy the discovery issues that confront them.

DATED this 11th day of January, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge